

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

ANTHONY L. ROTHGEB,

Plaintiff,

v.

**CAROLYN W. COLVIN,
Acting Commissioner of Social Security,**

Defendant.

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Civil Action No.: 5:12cv026

**By: Michael F. Urbanski
United States District Judge**

ORDER

This matter was referred to the Honorable B. Waugh Crigler, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for proposed findings of fact and a recommended disposition. The magistrate judge filed a report and recommendation on February 14, 2013, recommending that plaintiff's motion for summary judgment be granted and that this matter be remanded to the Commissioner for further consideration. The Commissioner has filed objections to the report and recommendation.

The court has reviewed the magistrate judge's report, the objections to the report, and the entirety of the administrative record and, in so doing, made a de novo determination of those portions of the report to which the plaintiff objected. The court finds that the magistrate judge was correct in concluding that evidence from Richard Whitehill, M.D. submitted to the Appeals Council is new, material and relates to the relevant period. Accordingly, the court accepts the magistrate judge's recommendation that remand is necessary to reassess plaintiff's residual functional capacity in light of this new evidence.

It is therefore **ORDERED** and **ADJUDGED** that:

1. The Commissioner's motion for summary judgment (Dkt. # 14) is **DENIED**;
2. Plaintiff's motion for summary judgment (Dkt. # 10) is **GRANTED**;
3. The report and recommendation (Dkt. # 19) is **ADOPTED in its entirety**;
4. This matter is **REMANDED** to the Commissioner for further consideration consistent herewith, pursuant to sentence four of 42 U.S.C. § 405(g); and
5. This matter is **STRICKEN** from the active docket of the court.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

IT IS SO ORDERED.

Entered: July 19, 2013

/s/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge